

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
PARALLAX HEALTH SCIENCES, INC.,	:	
	:	
Plaintiff,	:	20 Civ. 2375 (LGS)
-against-	:	
	:	<u>ORDER</u>
EMA FINANCIAL, LLC,	:	
	:	
Defendant.	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, on March 18, 2020, Plaintiff moved for preliminary injunctive relief, which the Court denied on March 25, 2020. (Dkt. Nos. 4, 13.)

WHEREAS, on April 10, 2020, Plaintiff filed the First Amended Complaint (the “FAC”). (Dkt. No. 19.)

WHEREAS, on May 7, 2020, Defendant filed an answer denying Plaintiff’s claims, asserting affirmative defenses and advancing counterclaims. (Dkt. No. 23.)

WHEREAS, on July 20, 2020, Plaintiff filed its answer to Defendant’s counterclaims. (Dkt. No. 38.)

WHEREAS, on October 7, 2020, Plaintiff’s counsel filed a motion to withdraw, which Magistrate Judge Robert W. Lehrburger granted on October 23, 2020, and Plaintiff failed to retain new counsel. (*See* Dkt. Nos. 62, 65, 68.)

WHEREAS, on December 24, 2020, Defendant filed for default. (Dkt. Nos. 71-75, refiled on Dec. 28, 2020, Dkt. Nos. 76-82.)

WHEREAS, by the Default Judgment Order dated August 10, 2021, Defendant was granted judgment against Plaintiff as to the counterclaims and the FAC was dismissed with prejudice. (Dkt.

No. 87.) Defendant's request for damages was referred to Judge Lehrburger for a post-default judgment inquest. (Dkt. No. 88.)

WHEREAS, on November 16, 2021, Plaintiff's new counsel filed a letter seeking to vacate the default judgment. (Dkt. No. 96.) Judge Lehrburger set a briefing schedule, and the motion was fully briefed on February 16, 2022. (*See* Dkt. Nos. 111-114.)

WHEREAS, on February 24, 2022, Judge Lehrburger issued a thirty-five-page Report and Recommendation (the "Report") recommending that Plaintiff's "motion to vacate the default be denied but that [Plaintiff] be given an opportunity to contest the amount of damages sought by EMA." (Dkt. No. 115.) On March 16, 2022, Judge Lehrburger issued an Order modifying the Report in part. (Dkt. No. 116.)

WHEREAS, on April 6, 2022, the Court adopted the Report as modified by the March 16, 2022, Order, and denied Plaintiff's motion to vacate the default judgment. (Dkt. No. 118.)

WHEREAS, on June 13, 2022, Judge Lehrburger issued a thirty-nine-page Report and Recommendation (the "Damages Report") recommending that Defendant be awarded (1) "[d]amages on the Notes in the amount of **\$42,275.10** (= \$0.00 for First Note + \$42,275.10 for Second Note);" (2) "**prejudgment interest at a rate of 24% per annum** [on that amount] running from February 28, 2020 to the date of judgment;" (3) "[d]amages on the Conversion Notices in the amount of **\$570,874.38** (= \$289,916.40 (for First Note Conversion Notice) + \$280,957.98 (for Second Note Conversion Notice);" (4) "**interest at a rate of 24% per annum** [on that amount] running from March 31, 2020 to the date of judgment;" (5) "[d]amages with respect to the Warrants in the amount of **\$175,263.20** (= \$91,017.55 for the First Warrant + \$84,245.65 for the Second Warrant);" (6) "**interest at the rate provided by Nev. Rev. Stat. Ann § 99.040(1)**" on that amount; (7) "**\$41,692.21** in attorneys' fees" and (8) "**\$717.74** in costs." (Dkt. No. 125 at 38 (emphasis in original).)

WHEREAS, as stated in the Damages Report, the deadline for any objections was fourteen days from service of the Report.

WHEREAS, no objections were timely filed.

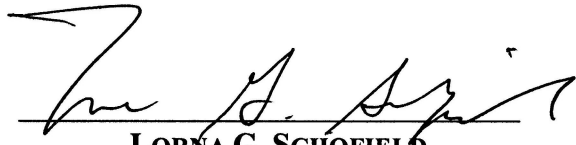
WHEREAS, in reviewing a Magistrate Judge's report and recommendation, a District Judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A District Judge is required to "determine de novo any part of the magistrate judge's disposition that has been properly objected to" by any party. Fed. R. Civ. P. 72(b); *United States v. Romano*, 794 F.3d 317, 340 (2d Cir. 2015). "[T]o invoke *de novo* review of the magistrate's recommendations . . . [a party's] objections must be specific and clearly aimed at particular findings in the magistrate judge's proposal." *McDonough v. Astrue*, 672 F. Supp. 2d 542, 547 (S.D.N.Y. 2009) (internal quotation marks and citation omitted). "[W]hen a party makes only conclusory or general objections, or simply reiterates his original arguments, the court reviews the report and recommendation strictly for clear error." *Piligian v. Icahn Sch. of Med. at Mount Sinai*, 490 F. Supp. 3d 707, 715 (S.D.N.Y. 2020) (internal quotation marks omitted).

WHEREAS, the Court finds no clear error on the face of the record as to the recommendation to award damages to Defendant. It is hereby

ORDERED that the Damages Report is **ADOPTED** in full and Defendant is awarded (1) damages on the Notes in the amount of \$42,275.10; (2) prejudgment interest at a rate of 24% per annum on that amount running from February 28, 2020 to the date of judgment; (3) damages on the Conversion Notices in the amount of \$570,874.38; (4) interest at a rate of 24% per annum on that amount running from March 31, 2020 to the date of judgment; (5) damages with respect to the

Warrants in the amount of \$175,263.20; (6) interest at the rate provided by Nev. Rev. Stat. Ann § 99.040(1) on that amount;¹ (7) \$41,692.21 in attorneys' fees and (8) \$717.74 in costs.

Dated: June 29, 2022
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

¹ The Nevada statutory pre-judgment interest rate for relevant time periods is as follows: 6.75% as of January 1, 2000; 5.25% as of July 1, 2020; 5.25% as of January 1, 2021; 5.25% as of July 1, 2001; 5.25% as of January 1, 2022. (See Dkt. No. 125 at 38 n.22.)